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*Attorney for Plaintiff Doe*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

John Doe,

Plaintiff,

v.

Sterling Infosystems, Inc.,

Defendant.

Case No.: 2:22-cv-01716-SMM

**PLAINTIFF'S MOTION TO  
PROCEED BY PSEUDONYM  
AND FOR PROTECTIVE ORDER  
AND MEMORANDUM IN  
SUPPORT**

Plaintiff, John Doe, moves to Proceed by Pseudonym and for entry of a Protective Order in his action against Defendant Sterling Infosystems, Inc. ("Sterling" or "Defendant") for his protection and for the reasons explained herein.

**I. INTRODUCTION**

This case is brought pursuant to the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 et seq., which protects consumers from exposure of private or inaccurate facts. The FCRA acknowledges the importance of confidentiality in its description of the purpose of the Act:

It is the purpose of this subchapter to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for

1 consumer credit, personnel, insurance, and other information in a manner  
2 which is fair and equitable to the consumer, with regard to  
3 the ***confidentiality, accuracy, relevancy, and proper utilization of such  
information*** in accordance with the requirements of this subchapter.

4 15 U.S.C. § 1681(b) (emphasis supplied).

5 The FCRA itself provides that “[t]here is a need to insure that consumer reporting  
6 agencies exercise their grave responsibilities with fairness, impartiality, and a respect for  
7 the consumer’s right to privacy.” 15 U.S.C. § 1681(a)(4). In order to protect consumers  
8 as fully as possible from unwarranted disclosures, the FCRA provides for statutory  
9 penalties, as well as recovery of compensatory damages and punitive damages and  
10 attorney-fee-shifting provisions.  
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12 This court has previously granted Plaintiff’s motion to proceed in pseudonym in  
13 two other cases, *Doe v. PreCheck, Inc.*, 2:21cv1129-DLR, *Doe v. Tempe St. Luke’s  
14 Hospital*, 2:21cv1122-DLR, and *Doe v. Accurate Background LLC*, CV-21-01629-PHX-  
15 MTM.  
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17 Sterling violated 15 U.S.C. §§ 1681e(b), 1681(i), and 1681k(a)(1) by failing to  
18 use reasonable procedures to ensure it only reported maximally accurate information  
19 about Plaintiff, failing to employ strict procedures to ensure that criminal public records  
20 information that is likely to have an adverse impact on a consumer’s employment is  
21 “complete and up to date”; and failing to timely provide the required FCRA notices to  
22 Plaintiff. Sterling sold to Plaintiff’s employer, Fieldworks, Inc. (hereafter referred to as  
23 “Fieldworks”), a consumer report that inaccurately detailed Plaintiff’s criminal history.  
24 The inaccurate information Sterling provided to Fieldworks ultimately cost Plaintiff to  
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1 be denied employment at his new job. If further publicized, the inaccurate information  
2 will likely continue to prevent Plaintiff from obtaining gainful employment.

3 **II. RELEVANT FACTUAL BACKGROUND**

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5 On April 15, 2016, Plaintiff was indicted on four counts of Trafficking In Stolen  
6 Property in the first degree; four counts of Forgery of a Credit Card, with intent to  
7 defraud; and one count of Burglary in the second degree. However, on November 28,  
8 2016, Plaintiff entered into a plea agreement that dismissed seven of the counts and  
9 reduced the remaining two. Plaintiff was ultimately convicted of one count of Fraudulent  
10 Use of a Credit Card, a Class 1 Misdemeanor and one count of Theft, a Class 6 Felony.  
11 Plaintiff's conviction and sentence was ultimately modified by court order, changing the  
12 felony to a misdemeanor.  
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15 Plaintiff applied for a position at Fieldworks in or around October 2020. As part  
16 of the application process, Plaintiff authorized Fieldworks to pull an employment-  
17 purposed consumer report. Fieldworks requested the report from Defendant Sterling on  
18 or about October 12, 2020. Sterling supplied a final inaccurate report containing the  
19 felony conviction to Fieldworks on or about October 16, 2020. Defendant has never  
20 supplied a copy of the aforementioned report to Plaintiff and a copy of the report or a  
21 summary of his rights at the time Defendant supplied the report to Fieldworks.  
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23 Instead, unbeknownst to Plaintiff, Fieldworks provided a copy of the report to  
24 Plaintiff, together with a pre-adverse action notice sometime in October 2020. Plaintiff  
25 did not discover this report until August 4, 2022. Sometime after the first report and email  
26 Fieldworks also sent a second report to Plaintiff informing him that he would not be hired  
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1 for the position due to findings on his consumer report. Plaintiff did not discover this  
2 report until August 4, 2022. Plaintiff was already aware that he was not being hired for  
3 the position at Fieldworks because of falsely reported felony on his record. It was when  
4 Fieldworks discussed report that Plaintiff learned that the employment-purposed  
5 consumer report sold by Defendant to his employer included a false, incomplete and  
6 outdated public record that indicated Plaintiff was convicted of a felony. Mr. Doe had  
7 informed a representative from Fieldworks that the felony was a misdemeanor and  
8 provided Fieldworks' with the Court Order showing that the crime was a misdemeanor,  
9 but as the representative had told him, the Order did not change their mind. Plaintiff was  
10 not hired.  
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### 13 **III. LEGAL STANDARD**

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15 “[T]he Ninth Circuit has held that pleading through the use of fictitious name is  
16 only permitted in the most unusual of cases. *Does I thru XXIII v. Advanced Textile Corp.*,  
17 214 F.3d 1058, 1067-68 (9th Cir. 2000). These are situations where ‘nondisclosure of a  
18 party’s identity is necessary to protect a person from harassment, injury, ridicule, or  
19 personal embarrassment.’ *Advanced Textile*, 214 F.3d at 1067-68. The Ninth Circuit has  
20 described three types of cases that are appropriate for fictitious pleading; (1) where  
21 identification creates the risk of physical retaliation, *id.* at 1068; (2) **where anonymity is**  
22 **needed to protect highly personal information**, such as medical reports or a person's  
23 sexual orientation, *id.* (citing *Doe v. United Services Life Ins. Co.*, 123 F.R.D. 437  
24 (S.D.N.Y. 1988)); (3) and where anonymity protects a party from criminal  
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1 prosecution. *Id.* (citing *Doe v. Stegall*, 653 F.2d 180 (5th Cir. 1981)).” *Ross v. Corich*,  
2 No. CV 08-0371-PHX-MHM, at \*2 (D. Ariz. Sep. 5, 2008) (emphasis added).

3 The Ninth Circuit applies “a balancing test ... when determining whether a  
4 plaintiff, ... should be allowed to proceed under a fictitious name. This balancing test[]  
5 asks the Court to weigh the ‘party’s need for anonymity’ against ‘prejudice to the  
6 opposing party and the public’s interest in knowing that party’s identity.’” *Ross*, No. CV  
7 08-0371-PHX-MHM, at \*2 (quoting *Advanced Textile*, 214 F.3d at 1068).

#### 8 9 10 **IV. LEGAL ARGUMENT**

11 Plaintiff is filing this suit against Defendant Sterling for violating the FCRA.  
12 Sterling violated the FCRA by publishing inaccurate public records information that was  
13 likely to have an adverse effect on Plaintiff’s employment, failing to employ procedures  
14 to prevent the publication of false information and to ensure that only complete and up  
15 to date information was furnished to his employer, and failing to provide him with a copy  
16 of his employment-purposed consumer report at the time it sold the report to Plaintiff’s  
17 employer. Sterling’s failure to comply with its obligations under the FCRA caused  
18 Plaintiff to lose his job with Fieldworks. That inaccurate information ultimately kept  
19 Plaintiff from being hired, and it could cost him more employment opportunities if it is  
20 further publicized.

23 Plaintiff accepted the State’s plea deal in 2017 specifically because it would allow  
24 him to avoid the stigma associated with being a “felon.” The Court approved Plaintiff’s  
25 plea agreement because he had **never** been convicted of a crime before, and **none** of his  
26 charges were violent. If it were not for Defendant’s violations of the FCRA, Plaintiff  
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1 would have no reason to publicly explain that this falsely reported felony, was actually a  
2 misdemeanor.

3 Although “[t]he decision to allow pseudonyms is ‘discretionary,’” Plaintiff  
4 understands that this Court’s authority “is cabined by the Ninth Circuit’s express  
5 guidance.” *Jane Roes 1-2 v. SFBSC Management, LLC*, 77 F. Supp. 3d 990, 993 (N.D.  
6 Cal. 2015) (quoting *Advanced Textile Corp.*, 214 F.3d at 1067–68). Plaintiff recognizes  
7 that this case is not one that the Ninth Circuit has explicitly determined necessitates  
8 anonymity. However, Plaintiff asks this Court to exercise its discretion and allow him to  
9 proceed as “John Doe.” Plaintiff took a plea deal where he was convicted with a  
10 misdemeanor nearly four years ago. Plaintiff has worked incredibly hard to get back on  
11 track and contribute positively to society. There is no reason that Plaintiff should be  
12 forced to publicly identify himself as someone who is a felon.  
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16 **A. Anonymity Is Necessary To Protect Highly Sensitive Information That**  
17 **May Result In Unwarranted, Negative Stigma.**

18 Although it is possible to work at a market researching company with  
19 misdemeanor convictions, it is nearly impossible for Plaintiff to obtain gainful  
20 employment if he is classified as a “felon.” In attempting to vindicate his FCRA rights,  
21 he may be subjected to additional harm, ridicule and deprivation of employment.  
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23 Plaintiff agreed to a jail sentence specifically to obtain a reduction of another  
24 felony to a misdemeanor, in hopes that he would still be able to gain meaningful  
25 employment upon his release. Unfortunately, Sterling provided an employment-purposed  
26 consumer report that included inaccurate information about Plaintiff’s criminal history.  
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1 Even after Plaintiff provided Fieldworks' representative with a copy of the Court Order  
2 that showed that the incident was a misdemeanor, Plaintiff was denied employment.

3 Those facts alone suggest that it would be detrimental to Plaintiff to proceed in  
4 this action under his legal name. This lawsuit should correct the inaccurate information  
5 in Sterling's records, and a potential employer should not receive the inaccurate  
6 information in the future. Plaintiff is desperate to put the past behind him. However, if  
7 Plaintiff is required to proceed under his legal name, it is very likely that a potential  
8 employer could associate this lawsuit with Plaintiff. Plaintiff will need to disclose  
9 information generally unavailable to the public to fully pursue his claims against  
10 Defendant. Fieldworks, an employer that had considered hiring Plaintiff and invested  
11 interviewing him for the position, was unwilling to look past the stigma associated with  
12 being a "felon," even **after** receiving proof that the charge was actually a misdemeanor.  
13 There is a possibility that a future employer will respond as Fieldworks did and decide  
14 that even the **possibility** that Plaintiff was convicted of a felony makes him unemployable.  
15 Plaintiff should not be forced to shoulder the stigma of a felony conviction if the State  
16 has clearly stated in Plaintiff's Court Order that he was convicted of a misdemeanor.

17 **B. Allowing Plaintiff to Proceed Under A Pseudonym Will Not Prejudice**  
18 **Defendant.**

19 Plaintiff is known to Defendant, so Plaintiff's decision to formally proceed by  
20 pseudonym is unlikely to have any impact on litigation. Additionally, Plaintiff's  
21 Complaint and this Motion contain factual details that should allow Defendant to  
22 ascertain Plaintiff's identity upon a review of Defendant's own records. However,  
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1 Plaintiff's Counsel is willing to meet and confer with Defendant's Counsel to provide  
2 Plaintiff's identifying information, if necessary, so long as Defendant agrees to keep his  
3 identity confidential.

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5 **C. The Public Is Not Interested In Plaintiff's Identity.**

6 Plaintiff concedes that the public has a general interest in knowing the not only of  
7 parties to litigation, but also to identity of a convicted individual. However, the public's  
8 interest in Plaintiff's identity was already served during Plaintiff's criminal case. If the  
9 public is truly interested in Plaintiff's criminal history, it is a matter of public record and  
10 can be retrieved from Pinal County. However, the public's interest in the identity of the  
11 Plaintiff is outweighed by the harm it may do him by causing him to identify as  
12 someone with a felony, even though the issue at hand is a misdemeanor conviction and  
13 revealing details of the felony conviction that he has a right to be free from its stigma.  
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16 Regardless, the public's interest in this litigation is not related to Plaintiff's  
17 identity or criminal history, specifically. Instead, the public's interest lies in the  
18 protection of consumers' rights under the FCRA. The public has an interest in ensuring  
19 that Defendant Accurate complies with its obligations under the FCRA, and only  
20 publishes maximally accurate public records information about consumers. Those  
21 interests can be served even if Plaintiff is permitted to proceed by pseudonym.  
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23 **V. CONCLUSION**

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25 Plaintiff should be permitted to proceed by pseudonym and for entry of a  
26 Protective Order because the FCRA was enacted **specifically** to protect consumers from  
27 being harmed by inaccurate information in credit reports. Moreover, the balancing test  
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1 employment by courts in the Ninth Circuit favors anonymity in this case. *See Ross*, No.  
2 CV 08-0371-PHX-MHM, at \*2.  
3  
4

5 /s/ Susan Rotkis

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